

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/680,172  
Applicant : Remi Swierczek  
Filed : October 5, 2000  
TC/A.U. : 3625  
Examiner : Matthew S. Gart

Confirmation No. 8130

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AUG 17 2004

**GROUP 3600**

Docket No. : 5713-2  
Customer No. : 021324

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION UNDER 37 C.F.R. §1.131 TO ESTABLISH COMPLETION OF THE  
INVENTION OF THIS APPLICATION IN THE UNITED STATES AT A DATE PRIOR  
TO SEPTEMBER 21, 1999**

I, Remi Swierczek, declare:

(1) That I am the inventor in the instant United States Patent Application Serial No. 09/680,172, filed October 5, 2000, and that I have read the specification including the claims of this application and are familiar with the contents thereof.

(2) That I have read U.S. Patent Publication No. US 2002/0023020 A1 to Kenyon (hereinafter "Kenyon"), having a filing date of July 13, 2001, and claiming priority through a chain of patent applications beginning with provisional application No. 60/155,064, filed on September 21, 1999, and am familiar with the contents the Kenyon application.

(3) That, appended to this Declaration, is Exhibit A as identified below:

Exhibit A - Copy of a letter authorizing a search on the Music Identification System from Mark A. Watkins of the firm of Oldham & Oldham Co., L.P.A. (now Hahn Loeser & Parks, LLP) which substantially describes the present invention in the second paragraph of the letter.

*R. S.*  
*8/5/04*

(4) That, appended to this Declaration, is Exhibit B as identified below:

Exhibit B - Copy of a Patentability / Search Report for Music Identification System from Mark A. Watkins of the firm of Oldham & Oldham Co., L.P.A. (now Hahn Loeser & Parks, LLP) which substantially describes the present invention in the third paragraph of the report.

(5) That the instant application provides a music identification system and method.

(6) That the invention concept described in Exhibits A and B describes the music identification system substantially as described and claimed in the instant application.

(7) That the redacted date of the report and letter of Exhibits A and B, respectively, are both prior to the earliest priority date of Kenyon, specifically, prior to September 21, 1999.

(8) That the invention as described and claimed in the instant application was conceived prior to September 21, 1999, as evidenced by Exhibits A and B.

(9) That the invention substantially as described and claimed in the instant application was constructively reduced to practice shortly thereafter with the filing of provisional application 60/158,087 on October 7, 1999, and 60/186,565 on March 2, 2000.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the U.S.C. and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

8/5/04  
Date

  
Remi Swierczek



## OLDHAM &amp; OLDHAM CO., L.P.A.

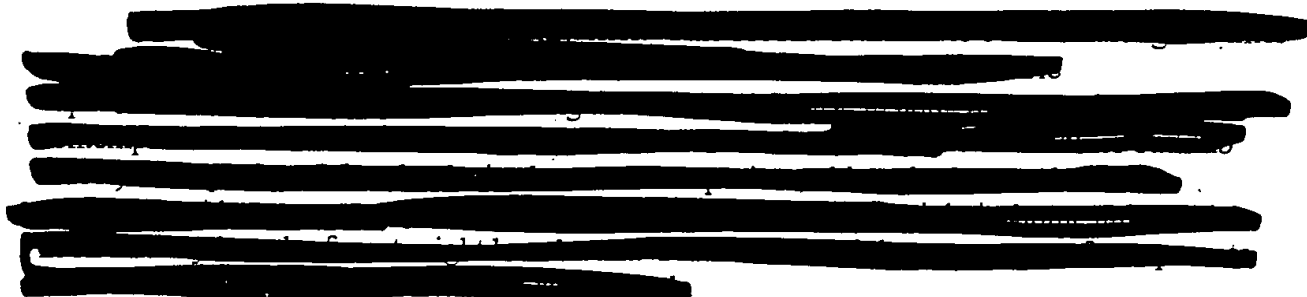
INTELLECTUAL PROPERTY LAW  
AND LITIGATION MATTERSEDWIN W. (NED) OLDHAM  
SCOTT M. OLDHAM  
MARK A. WATKINS  
STEPHEN L. GRANT  
CRAIG E. MILLER  
R. ERIC GAUM  
ROBERT P. BENNETT  
ROBERT J. CLARKTWIN OAKS ESTATE  
1225 WEST MARKET STREET  
AKRON, OHIO 44313-7188  
(330) 864-5550  
FACSIMILE (330) 864-7986  
<http://www.twinoaks.com>ALBERT H. OLDHAM (1908-1974)  
VERN L. OLDHAM (1912-1988)OF COUNSEL  
BRUCE H. WILSON  
LOUIS F. KREEK, JR.Sidney Kearns  
P.O. Box 1720  
Bowie, MD 20717

RE: One Patentability Search and One State-of-the Art Search

Dear Sidney:

Please accept this letter as authorization to conduct the following searches.

Music Identification System (File No. 5713). Generally, this concept is a quick method for identifying a song or artist from a short sound clip or sound byte. The inventor's idea is that a user who hears a piece of music on the radio or at any venue, could tape a short segment of the music and have it identified through a database. More specifically, the contemplated invention is for a user to have a recording device for recording short sound clips or sound bytes of an audio (or perhaps the audio portion of a video). The recorder, similar or identical to technology memo recorders (tape or digital) might be of the size which could be attached to a key chain. The user would then record a short segment of the song or audio onto the recorder. The user would then play the sound byte from the recorder into a database (contemplated as either a free-standing kiosk or over the Internet). The database would identify the entire song, based on the sound byte it received and would immediately provide the use with information such as the title, artist, album or cd. The database could further provide information on where the item could be purchased or could provide a mechanism for ordering the music selection online.



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EDWIN W. OLDHAM  
SCOTT M. OLDHAM  
MARK A. WATKINS  
STEPHEN L. GRANT  
CRAIG E. MILLER  
R. ERIC GAUM  
ROBERT P. BENNETT  
ROBERT J. CLARK

## OLDHAM & OLDHAM CO., L.P.A.

INTELLECTUAL PROPERTY LAW  
AND LITIGATION MATTERS

TWIN OAKS ESTATE  
1225 WEST MARKET STREET  
AKRON, OHIO 44313-7188  
(330) 864-5550  
FACSIMILE (330) 864-7986  
<http://www.twinoaks.com>



EXHIBIT B

ALBERT H. OLDHAM (1908-1974)  
VERN L. OLDHAM (1912-1988)

OF COUNSEL  
BRUCE H. WILSON  
LOUIS F. KREEK, JR.

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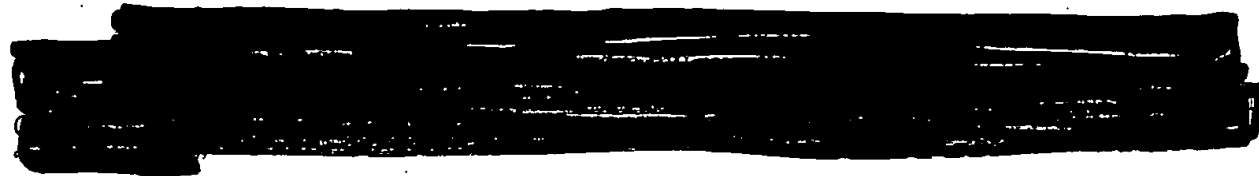
Mr. Remi Swierczek  
REMEX 2  
43-150 Bierun  
Torowa 27  
Poland

CONFIDENTIAL LEGAL OPINION

Re: *Patentability / Search Report for Music Identification System*  
*Our File No. 5713-SCH*

Dear Remi:

With respect to your concept, and as you may know from prior patent searches, patentability has three requirements: **novelty**, **usefulness** and **non-obviousness**. The **novelty** requirement, under patent law, requires that the invention is new and has not been previously disclosed in a single-printed reference (whether in a patent or other printed publication) and that it has not been known to the public for more than one (1) year. The **usefulness** requirement is satisfied upon minimal proof that the invention is operable and can function as a benefit to humanity. The **non-obviousness** requirement means that the invention, as a whole, must not be disclosed when viewed in light of one or more referenced publications known prior to the invention. In other words, a patent will not be granted if it would be logical to combine the teachings of two (2) or more references to arrive at the submitted invention.



As I understand your invention, it is a music identification system wherein a user may record a short segment of music and identify it through an automated database. The user who hears a piece of music on the radio or at any music venue could tape a short segment of the music and have it identified through the database. The user would operate a recording device for recording short sound clips or sound bytes of an audio, or perhaps the audio portion of a video. The recorder, similar or identical to technology memo recorders (tape or digital) might be of a size

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Mr. Remi Swierczek  
[REDACTED]

Page 2

which could be attached to a key chain. After recording a short segment of a song the user would play the sound byte from the recorder into the automated database. The automated database could be configured as either a free-standing kiosk or over the Internet. The database would identify the entire song, based on the sound byte it received and then immediately provide the user with information such as the title, artist, album or CD. The database could further provide information on where the item could be purchased or could provide a mechanism for ordering the music selection.

[REDACTED]

[REDACTED]

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